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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,202	08/31/2001	John Brooks Smith	7152	4500
7590	02/17/2004		EXAMINER	
			RHEE, JANE J	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 02/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Application No. 09/945,202	Applicant(s) SMITH ET AL.	
	Examiner Jane J Rhee	Art Unit 1772	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 21 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

a)  The period for reply expires 4 months from the mailing date of the final rejection.

b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2.  The proposed amendment(s) will not be entered because:

- (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
- (b)  they raise the issue of new matter (see Note below);
- (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.

6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-33 and 54-63.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8.  The proposed drawing correction filed on \_\_\_\_\_ is a) approved or b) disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s) ( PTO-1449 ) Paper No(s). \_\_\_\_\_.

10.  Other: see attachment

**ADVISORY ACTION*****Response to Arguments***

Applicant's arguments filed 1/21/04 have been fully considered but they are not persuasive.

In response to applicant's argument that Weinstein et al. do not disclose or suggest packaging uncut and precut fibrous insulation batts together in a package to facilitate the insulation of both standard width and nonstandard width cavities by an installer, nor does Berdan disclose or suggest packaging uncut and precut fibrous insulation batts together in a package to facilitate the insulation of both standard width and nonstandard width cavities by an installer, Weinstein et al. discloses that contractors seek to maintain the spacing of such framing members in these structures at standard distances for ease of construction and insulation of elongated cavities formed in these walls, ceilings, floors, and roofs, however frequently the walls, ceilings, floors and/or roofs of these structures include elongated cavities defined, at least in part by adjacent framing members which are spaced apart a nonstandard distance less than the standard distance between framing members (col. 1 lines 29-38) therefore, Weinstein et al. teaches precut fibrous batt to insulate various cavities of various nonstandard widths, less than a standard width (col. 1 lines 43-44). It would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide both uncut and precut insulation batts for insulating elongated cavities of standard distances and nonstandard distances that are less than standard widths as taught by Weinstein et al. Berdan teaches a stack of fibrous insulation batt wherein the

stack of fibrous insulation batt is being compressed in a direction perpendicular to the major surfaces of the insulation batts and is enveloped within a covering (figure 7 and figure 8) for the purpose of to enable the shipping of highly compressed package when can be broken down into smaller units with both the shipping package and the units themselves being capable of being cartwheeled by an individual installer or insulation contractor (col. 1 lines 56-61). Weinstein et al. and Berdan was combined together to provide packaging uncut and precut fibrous insulation batts together in a package to facilitate the insulation of both standard width and nonstandard width cavities by an installer.

In response to applicant's argument that Allwein et al. does not disclose or suggest precut fibrous insulation batts such as those of the present invention where the batt sections are formed by longitudinal cuts in the batt and the batt sections are separably held together by separable connectors formed in the fibrous batt by the cuts, it is because Weinstein et al. discloses the batt sections being separably joined to adjacent batt sections by separable connector means, extending along the length of the precut fibrous insulation batt (figure 1 number 20). Allwein et al. teaches that each of the facing sheets has a first pair of tabs adjacent lateral edges of the first major surface of and extending along the length of the resilient fibrous insulation batt (figure 2 number 32 and 36) to which the facing sheet is bonded, and each of the facing sheets bonded to one of the precut fibrous insulation batts has additional pairs of tabs, at least substantially aligned with the separable connector means (figure 1 number 42) of and extending along the length of he precut fibrous insulating batt to which the facing sheet

is bonded for the purpose of sealing the facing material together and reducing the likelihood of the dust and fibers becoming a possible irritant to the workers handling and installing the insulation assemblies (col. 4 lines 35-50).

In response to applicant's argument that Weinstein et al., Berdan, and Allwein does not disclose or suggest an insulation package containing a stack of both uncut and precut resilient fibrous insulation batts wherein the stack of resilient insulation batts contained within the package includes between 20% and 70% precut fibrous insulation batts and between 30% and 80% uncut fibrous insulation batts, Weinstein et al. teaches that it is common for 50% or more of the framing members in the exterior walls of these structures to be spaced apart at nonstandard distances that are less than the standard spacing for such framing members (col. 1 lines 39-42) therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide between 30% and 80% of uncut insulation batts and between 20% and 70% of precut insulations batts depending on the amount of elongated cavities of standard distance and nonstandard distance are formed in the walls, ceilings, floors and/or roofs.

In response to applicant's argument that Weinstein et al., Berdan, and Allwein et al. do not disclose or suggest a unitized insulation package containing both packages of uncut and precut resilient fibrous insulation batts that are bound together, Weinstein et al. discloses that it would be obvious to provide both uncut and precut insulation batts for insulating elongated cavities of standard distances and nonstandard distances that

are less than standard widths and Berden teaches packaging a multiplicity of insulation packages into a shipping package (col. 1 lines 9-10).

In response to applicant's argument that Weinstein et al. does not disclose or suggest a batt with batt sections that are formed by a series of cuts passing from the first major surface to the second major surface of the fibrous insulation batt nor a batt wherein each separable connector means joining the batt sections is a series of separable batt connectors, separated and formed by one of series of cuts that extend for greater than one half of the thickness of the fibrous insulation batt so that the batt sections are not free to flop or pivot open relative to each other while being handled, this limitation is a process by product claim wherein the process limitations are given little or no patentable weight. The method of forming the product is not germane to the issue of patentability of the product itself. Further, when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the Applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. *In re Brown*, 459 F.2d 531, 173 USPQ 685 (CCPA 1972); *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974). This burden is NOT discharged solely because the product was derived from a process not known to the prior art. *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 571-272-1499. The examiner can normally be reached on M-F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nasser Ahmad can be reached on 571-272-1487. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and none for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Jane Rhee  
February 9, 2004



Nasser Ahmad  
NASSER AHMAD  
PRIMARY EXAMINER